

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID T. SILVA,
GERROD T. SMITH, and
JONATHAN K. SMITH,
Members of the Shinnecock Indian Nation,

Plaintiffs,

CV 18-3648
(SJF)(SIL)

-against-

BRIAN FARRISH,
JAMIE GREENWOOD,
EVAN LACZI,
BASIL SEGGOS,
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
and SUFFOLK COUNTY DISTRICT ATTORNEY'S
OFFICE,

Defendants.
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JAMES GILMORE, being duly sworn, deposes and says:

1. I am employed by the New York State Department of Environmental Conservation (DEC) as the Director of the Division of Marine Resources. I submit this affidavit in opposition to Plaintiff's Motion for Preliminary Injunction.
2. I have worked at DEC for 31 years and have been Director of the Bureau of Marine Resources, then Division of Marine Resources for a total of 11 years. In that capacity, I am responsible for the protection and management of New York State's marine species and habitats for the entire Marine and Coastal District of New York State. I also serve as the New York Commissioner on the Atlantic States Marine Fisheries Commission (ASMFC or Commission), currently the Commission Chairman and am the official state member for the Mid-Atlantic Fisheries Management Council. These bodies cooperatively manage marine fisheries from

Maine to Florida. Additionally, I serve as Director of the Marine Headquarters on Long Island overseeing all technical and administrative functions including annual budgets, funding, grants, strategic planning, permitting, and enforcement. I have a M.S. in Marine Sciences and Marine Fisheries from State University of New York at Stony Brook and B.A. in Biology from State University of New York at Plattsburgh. I also hold an adjunct position at the School of Marine and Atmospheric Sciences at SUNY Stony Brook where I teach graduate level marine fisheries management. A copy of my curriculum vitae is attached hereto at Exhibit 1.

3. I am familiar with the facts set forth below based on my personal knowledge, my discussions with other involved DEC staff, and my review of DEC files. I am also fully familiar with the rules and regulations pertaining to marine and coastal fisheries in New York State.

4. American eel (*Anguilla rostrata*) are an important and protected resource. Their population is depleted and at historically low levels for several reasons, including overfishing. Juvenile American eel are known as elvers or glass eels because of their transparency. A recent stock assessment recommended mortality be reduced on all life stages of American eel. The assessment found that further fishing of American eel at every stage, particularly glass eels, could be particularly detrimental to the stock, especially if other sources of mortality (e.g., turbine mortality, changing oceanographic conditions) cannot be readily controlled. See ASMFC, 2012. American Eel Benchmark Stock Assessment. Stock Assessment Report 12-01 of the Atlantic States Marine Fisheries Commission.

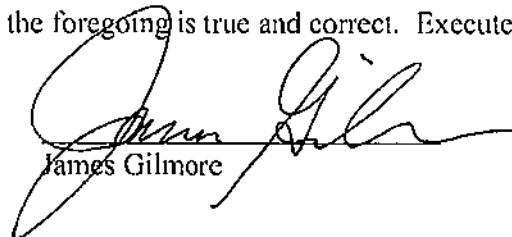
5. There is a great demand for glass eels in Asian markets, which are raised for human consumption. Glass eels have been sold for more than \$2,000 per pound. See ASMFC, 2017 American Eel Stock Assessment Update of the Atlantic States Marine Fisheries Commission.

6. The Atlantic States Marine Fisheries Commission (ASMFC) coordinates and manages the fishery resources, including American eel fisheries, of 15 Atlantic coastal states from Maine to Florida. The current Commission fishery management plan prohibits the taking of juvenile eels, or glass eels, in 13 of the States, including New York, and authorizes a limited quota of glass eels in Maine and South Carolina. The Maine Department of Marine shut down the elver fishery two weeks early this year on May 24, 2018 because of illegal sales which jeopardized the state's ability to manage the fishery. Pursuant to federal law, any state that does not comply with the ASMFC fishery management plan may have its fishery shut down by the Secretary of Commerce. *See* 16 U.S.C. § 5106(c).

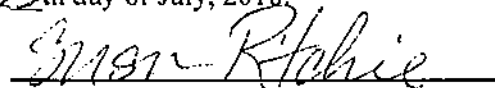
7. DEC complies with the ASMFC fishery management plan via its fishing regulations in 6 NYCRR §§ 10.1(a) and (b), 40.1(f) and (i) making it illegal to take or possess American eels less than 9 inches long in New York State. 6 NYCRR §§ 10.1(a) and (b), 40.1(f) and (i). Glass eels are less than 9 inches long.

8. The Shinnecock Reservation is an 800-acre reservation in Southampton, New York, Suffolk County. The reservation has no major inland bodies of fresh water that would give habitat to glass eels. Although the reservation is adjacent to Shinnecock Bay, Shinnecock Bay is a New York State waterway and, as such, taking glass eel from Shinnecock Bay is prohibited by the ASMFC fishery management plan and State law.

9. I declare under the penalty of perjury that the foregoing is true and correct. Executed on July ~~13~~ 23, 2018.


James Gilmore

Sworn before me this
23rd day of July, 2018.


Notary Public

SUSAN RITCHIE
Notary Public, State of New York
No. 01R18191068
Qualified in Suffolk County
Commission Expires Sept. 8, 2020

EXHIBIT ONE

James J Gilmore, Jr
203 Richmond Avenue
Amityville, NY 11701
631-598-4718
gilpeople@verizon.net

SUMMARY OF EXPERIENCE

Total Experience Over forty years of experience in natural resources management and environmental assessments. Efforts have focused on program direction and management, environmental impact assessment, legislation and regulation promulgation, land acquisition and management, field sampling, data management/analysis and preparation and review of environmental, regulatory and monitoring reports.

Education **MS**, Marine Sciences, Marine Fisheries;
State University of New York at Stony Brook, (1985)
MS Thesis - Oceanic distribution, abundance and migration of bluefish (*Pomatomus saltatrix*) along the east coast of the United States.
BA, Biology; State University of New York at Plattsburgh, (1976)
AAS, Biological Technology; State University of New York at Farmingdale, (1974)

Honors and Awards New York State Sea Grant Scholar
Phi Theta Kappa - National Honor Fraternity
Marine Stewardship Award – Riverhead Foundation

Boards, Councils, and Commissions Atlantic States Marine Fisheries Commission –
New York Administrative Commissioner – 2007 – present
Commission Chairman 2017 – present
Commission Vice-Chairman 2016-2017:
Board Chairman: Striped Bass, Weakfish; Blackfish; Horseshoe Crab; Executive,
Administrative Oversight, Awards, ACCSP and Resolutions committees
Mid-Atlantic Fisheries Management Council – New York State Director - Official Representative
Marine and Coastal District of New York Conservation, Education and Research Board – Governor's
Appointee
New York Sea Grant Board of Governors – ex-Officio New York State representative
Marine Resources Advisory Council – ex-Officio DEC Representative
Shellfish Advisory Committee - ex-Officio DEC Representative

Affiliations, and Certifications Advanced Certification - Hazardous Waste Site Investigation;
NOAA Advanced Oil Spill Response Training;
Incident Command System - Incident Commander;
NAUI certified Scuba Diver

1986 to Present: **New York STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

2007 - Present Director, Division of Marine Resources

Responsible for the protection and management of New York State's marine species and habitats for the entire Marine & Coastal District. Represent the interests of the Department on interstate management committees on marine resources. Serve as New York

Commissioner on the Atlantic States Marine Fisheries Commission and Official state member for the Mid-Atlantic Fisheries Management Council. These bodies cooperatively determine management measures for marine fisheries from Maine to Florida for federal and state jurisdictional waters. Serve as Director of the Marine Headquarters on Long Island overseeing all technical and administrative functions including annual budgets, funding, grants, strategic planning, permitting, enforcement, etc. Represents the Division's interests as a member of the DEC Executive Team.

1994 - 2007 Regional Supervisor of Natural Resources - Region 2 (New York City)
Emergency Response Coordinator (ERC)
Deputy Permit Administrator
Acting Regional Director

Responsible for direction of regional natural resources programs; Fish & Wildlife, Marine Resources and Lands & Forests in New York City. Oversee and supervise operations of the Bureaus of Fisheries, Wildlife, Marine Resources, Environmental Protection, Private Lands, Public Lands, Real Property, Forest Protection and Education. Activities encompass all regulatory programs, land acquisition and management, fisheries, urban forestry, forest health, education, outreach, stewardship programs, natural resources damage assessments/remedial actions, and other initiatives aimed at preservation and enhancement of natural resources within the region. Regulatory program responsibility for implementation of Article 15, Protection of Waters, Article 24, Freshwater Wetlands and Article 25, Tidal Wetlands. Efforts included approving all coastal development and wetland permits, evaluation and decision on variances, defense of legal challenges, and enforcement and compliance with appropriate regulations. Also responsible for implementation of numerous natural resource acquisitions, habitat restoration, enforcement and remediation projects totaling over \$100 million in funding. Additionally served as the Emergency Response Coordinator for DEC in New York City providing coordination with the State Emergency Management Office during emergency events (Storm response, Y2K, 9/11, Asian Longhorned Beetle eradication, Conventions, Special Events, etc.) Other initiatives included development and implementation of innovative programs such as the Tidal Wetlands Regulatory/Enforcement class with the New York Aquarium and major DEC outreach events such as the New York National Boat Show.

1990 - 1993 Regional Manager - Marine Resources - Region 2

Responsible for initial establishment and subsequent management of Department's Region 2 Marine Resources program. Program responsibilities deal predominately with application of New York State Environmental Conservation Laws (ECL) that pertains to the marine environment. This included all regulatory programs associated with wetlands, dredging, marine and coastal resources and remedial activities.

1986 - 1990 Marine Resources Specialist - Region 1 - Stony Brook

Project leader for a Wallup-Breaux funded project involving protection of the marine environment and marine fisheries by ensuring compliance with state and federal regulations for the entire marine and coastal district.

Specifics of project included environmental impact assessment (from development and hazardous waste), regulation review and promulgation, legislation review, preparation and presentation of professional testimony, development of standards for dredging reviews, dredging project approvals, critical fish habitat evaluation, marine water classification for fisheries protection, development of monitoring programs, tidal wetland assessments, impingement/entrainment evaluations for electric generating facilities and preparation of interim and annual reports. Project also required membership on various federal, state, and local government cooperative programs.

1975 - 1986: **ENVIROSPHERE COMPANY - Fisheries/Aquatic Biologist and Data Management Specialist**

Responsible for report generation, field operations, data analyses and data base management for environmental monitoring studies of fossil, nuclear and hydroelectric power facilities, and other special studies with potential ecological impacts primarily for fisheries. Provided several Clean Water Act 316(a) and (b) demonstrations evaluating power plant cooling water systems impacts on local fisheries.

Report generation included preparation of environmental reports, impact statements, assessments and baseline documents for freshwater, estuarine, marine and terrestrial environments.

Field activities have included sampling program development and organization and management of field crew operations. Field investigations were performed in various water bodies ranging from wetland and small stream surveys to offshore oceanic sampling and have included all sampling aspects of fisheries and aquatic ecology.

Data analyses and management experience includes creation of complete data base management systems from data input through final reports. Advanced multiple access systems were developed for direct submittal of reports to regulatory agencies. Experience includes system development on personal, mini- and mainframe computers encompassing dozens of software applications.

Representative client experience in over 20 U.S. States

RELATED EXPERIENCE

- Adjunct Lecturer – Graduate Fisheries Management Courses
SUNY Stony Brook, New York School of Marine and Atmospheric Sciences:
Marine Fisheries Management (2012 - present)
Guest Lecturer – Marine Resources Topics (2009 – present)
- York College, Jamaica, New York Lecturer:
Marine science, fisheries and pollution. (1987 through 1990's)
- Kingsborough Community College, Brooklyn, New York
Maritime Technology Industry Advisory Panel (2008 – Present)
- Graduate Student Research Scientist - R/V Albatross IV (2 cruises; 1983 - 1984):
Participated on two NOAA/NMFS North Atlantic groundfish research cruises out of Woods Hole, Ma. Work involved deployment and sampling of Yankee trawls, and use of physical oceanographic equipment for collection of corollary data on physical water quality and bathymetry.
- Animal Physiology Laboratory Instructor - SUNY Plattsburgh (1975-1976):
Responsible for preparation and delivery of lectures, demonstrations, exams and final grades.